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PART IV

ENVIRONMENTAL PROTECTION AGENCY

■

HAZARDOUS SUBSTANCES

Definitions, Designations, Revocation of Regulations, Proposed Expansion of Criteria of Designation and Proposed Determination of Reportable Quantities

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER D—WATER PROGRAMS

[FRL 1055-2]

PART 116—DESIGNATION OF HAZARDOUS SUBSTANCES

Amendment and Addition of Definitions

AGENCY: Environmental Protection Agency.

ACTION: Amendments to Final rule.

SUMMARY: On March 13, 1978, EPA published regulations under the Clean Water Act to control the discharge of hazardous substances. 43 FR 10474. Recent changes in the Clean Water Act require amendments to the definitions of "the Act" and "Discharge", and the addition of the definition of "Otherwise subject to the Jurisdiction of the United States" in 40 CFR 116.3.

EFFECTIVE DATE: February 16, 1979.

FOR FURTHER INFORMATION CONTACT:

Kenneth M. Mackenthun, Director, Criteria and Standards Division (WH-585), Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 755-0100.

SUPPLEMENTARY INFORMATION: On March 13, 1978, the Environmental Protection Agency ("EPA") published regulations under the Clean Water Act to control the discharge of hazardous substances (43 FR 10474). Part 116 of those regulations designated 271 substances as hazardous. Related regulations (Parts 117 through 119) were also published at that time but are subject to a revocation notice published concurrently with these amendments.

Recent amendments to the Clean Water Act (Pub. L. 95-576) require changes to two definitions and the addition of one definition in Part 116. The term "The Act" must be defined to include the amendments contained in Pub. L. 95-576. The term "Discharge" must be redefined to conform with the amended definition, which excludes certain discharges permitted under section 402 of the Act. EPA is proposing regulations today which set forth in detail those discharges which are subject to the reporting requirements, and civil penalty and clean-up cost liabilities under section 311 of the Act. Finally, the statutory amendments require that the term "Otherwise subject to the jurisdiction of the United States" be defined.

EPA finds good cause to make the amendments effective immediately. First, the amendments are technical in nature in that they merely conform the definitions in the regulations to those in the statute. The statutory amendments were in no way intended to affect the designation of 271 substances as hazardous. (*See* statement of Senator Stafford, Congressional Record at S19259 (October 14, 1978).) Second, the definitional changes will not affect regulated parties until regulations setting forth the reportable quantity for each substance are promulgated and made effective. EPA is further amending Part 116 today in this same FEDERAL REGISTER to add the 28 hazardous substances which were proposed on March 13, 1978, 43 FR 10506.

Dated: February 8, 1979.

DOUGLAS M. COSTLE,
Administrator.

§ 116.3 [Amended]

The definitions of "The Act" and "Discharge" in § 116.3 of Part 116, Subchapter D, Chapter I, Title 40 of the Code of Federal Regulations are amended to read as follows:

"The Act" means the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500), and as further amended by the Clean Water Act of 1977 (Pub. L. 95-217), 33 U.S.C. 1251 et seq., and as further amended by the Clean Water Act Amendments of 1978 (Pub. L. 95-576);

"Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 402 of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant operating or treatment systems;

The definition of "Otherwise subject to the jurisdiction of the United States" is added to § 116.3 of Part 116, Subchapter D, Chapter I, Title 40 of the Code of Federal Regulations and reads as follows:

"Otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement to which the United States is a party.

[FR Doc. 79-4886 Filed 2-15-79; 8:45 am]

[6560-01-M]

[FRL 1055-3]

PART 116—DESIGNATION OF HAZARDOUS SUBSTANCES

Designation of 28 Substances

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Agency by issuing this regulation designates 28 materials as hazardous substances pursuant to section 311 of the Clean Water Act (33 USC 1251 *et seq.*). Designation of these 28 substances was proposed on March 13, 1978 (43 FR 10506) and these substances are an addition to the 271 hazardous substances designated on March 13, 1978 (43 FR 10474).

EFFECTIVE DATE: Immediately.

FOR FURTHER INFORMATION CONTACT:

Kenneth M. Mackenthun, Director, Criteria and Standards Division (WH-585), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-0100.

SUPPLEMENTARY INFORMATION: On March 13, 1978, the Administrator of the Environmental Protection Agency published final regulations (43 FR 10474-10506) to control the discharge of hazardous substances. Those regulations are Part 116 which designated 271 substances as hazardous; Part 117 which determined the removability of the substances; Part 118 which determined harmful quantities; and Part 119 which established the units of measurement and rates of penalties for the substances. The effective dates were to have been June 12, 1978, except for vessels which were to have had an effective date of September 11, 1978.

Concurrent with that final rulemaking, the Administrator on March 13, 1978, published proposed regulations that amended the final regulations in the following manner: added 28 substances to the designation list of Part 116; determined in Part 117 that none of the substances were removable; determined in Part 118 the harmful quantities of the substances; and established in Part 119 units of measurement and rates of penalty for the substances. Proposed designation was based on acute toxicity to aquatic or-

ganisms (see discussion 43 FR 10474-10479).

Prior to their effective date the hazardous substances regulations were challenged in several law suits. On August 4, 1978, Part 117 and Part 118 were invalidated by order of a Federal District Court. See *Manufacturing Chemists Association, et al.* v. *Costle et al.*, 455 F. Supp. 968 (W.D. La., 1978). Part 116 was not affected by the ruling. On November 2, 1978, Congress amended section 311 of the Clean Water Act by the enactment of P.L. 95-576 which provided, among other things, that the Agency no longer be required to make determinations of removability or units of measurement. The requirement for determination of harmful quantity was changed to determinations of quantities "which may be harmful." The Agency in this FEDERAL REGISTER revokes Parts 117, 118, and 119, and is proposing a new Part 117 implementing the amended statute, including reportable quantities for these 28 substances.

COMMENTS

Interested persons were given until May 12, 1978 to submit written comments on all aspects of the proposed rulemaking. Eleven letters were received in response to this notice, a number dealing with the hazard categorization (reportable quantities) determinations which are being reproposed today. Review of these comments resulted in the following analysis.

1. *Toxicological selection criteria and hazard categorization.* Several commentors questioned the scientific data upon which selection of the substances was based and asked either that certain substances be deleted from the list or that the assigned hazard category be changed.

(a) One commentor asked that propylene oxide be deleted from the list because its 96-hour LC50 (the concentration of a substance which is lethal to one-half of a population of test organisms in 96 hours) to aquatic organisms is greater than 1,000 mg/l (milligrams per liter). This same commentor requested that the hazard category of 2,4,5-T (amines and salts) be changed from "B" to "C".

Although the 96-hour LC50 of propylene oxide varies among species, propylene oxide has been shown to have a 96-hour LC50 of 215 mg/l to bluegill, and therefore meets the Agency's toxicological selection criteria. It will therefore be retained on the list. No information was provided to support the request that the hazard category of 2,4,5-T be changed. Based on its 48-hour LC50 of 1 mg/l to bluegills, 2,4,5-T remains in Category B.

(b) One comment letter requested that the hazard classification of trichloroethylene be changed from "C" to "D". The commentor cited one authority as establishing the 96-hour LC50 for trichloroethylene for an unnamed aquatic species at 100 to 1,000 mg/l, and another as stating that 96 mg/l trichloroethylene had no effect on *Daphnia* after 48 hours.

Although acute toxicity varies among species, trichloroethylene has a 96-hour LC50 of 16 mg/l for dab, a type of flatfish. The Agency believes that this justifies retention of the "C" classification for trichloroethylene.

(c) One commentor stated that it was improper to designate trichloroethylene (TCE) as a hazardous substance without also designating 1,1,1-trichloroethane (methyl chloroform) and perchloroethylene (PCE). The commentor stated that all three of these compounds are used in solvent degreasing processes, and are essentially similar with respect to toxicity to aquatic species.

The Agency recognizes that not all potentially hazardous substances have been designated. EPA is continuing to review additional substances, and is considering expansion of the selection criteria used in designating hazardous substances. Trichloroethylene meets the existing selection criteria; it will be maintained as a designated hazardous substance. Both perchloroethylene and methyl chloroform along with other highly chlorinated organic compounds will receive careful scrutiny in the process for possible designation as hazardous substances.

(d) One comment letter stated that speciation of the silver in silver nitrate may seriously condition toxicity of the compound and lead to errors in calculations of lethal concentrations. It was also stated that total silver determinations may not be true indicators of ionic silver concentrations.

The Agency recognizes that molecular species determination can affect the determination of lethal concentrations of many compounds. This fact is not peculiar to silver nitrate, and cannot serve as a basis for rejecting toxicity information. Therefore, silver nitrate is retained on the list.

(e) One commentor requested that both silver nitrate and di-n-butyl phthalate be assigned to lower hazard categories, but did not provide data to support the request.

The Agency has data that show 96 hour LC50's fathead minnows of 1.30 mg/l for n-butyl phthalate, and 0.1 mg/l for silver nitrate. The Agency believes that these data support retention of n-butyl phthalate in the "B" category and silver nitrate in the "X" category.

(f) One commentor suggested that silver nitrate be deleted from the list on the basis that its high cost ($150/lb) would assure little or no discharge, since it would be handled more carefully than less expensive substances.

Silver nitrate meets the toxicological selection criteria and will be retained as a hazardous substance. Discharge potential screening criteria (including consideration of cost) were used by the Agency in its initial designation of 271 substances as hazardous, but it was specifically noted that such criteria did not preclude subsequent designations of substances initially not designated.

2. General comments. (a) One commentor suggested that no new substances be designated until additional criteria are developed.

The Agency believes that the selection process should be continuous with substances added as data become available. Meanwhile, the selection criteria will be expanded. It would not be in the best interest of either the public, the Agency or industry if the list were held static until additional selection criteria were developed.

(b) One commentor stated that the natural formation of hydrogen sulfide in landfills, swamps, and other natural or non-industrial sources, and its leaching into ground and surface waters constitute a much more serious hazard to the environment than its discharge from commercial and industrial sources. The economic consequences of controlling hydrogen sulfide discharges from these non-industrial sources were also noted by the commentor.

The Agency is aware that hazardous substances may pose environmental hazards through means other than discharge subject to section 311. The fact that a substance occurs naturally does not preclude its designation as a hazardous substance if it meets the Agency's toxicological selection criteria.

Dated: February 8, 1979.

DOUGLAS M. COSTLE,
Administrator.

Amend Table 116.4A—List of Hazardous Substances, in alphabetical order, by the addition of the following substances with their CAS numbers, synonyms and isomers:

§ 116.4 Designation of hazardous substances.

* * * * *

Common Name	CAS No.	Synonyms	Isomers	CAS No.
Adipic acid	124049	Hexanedioic acid		
n-butyl phthalate	84742	1,2-benzenedicarboxylic acid, dibutyl ester, dibutyl phthalate.		
Carbofuran	1563662	Furadan		
Carbon tetrachloride	56235	Tetrachloromethane Perchloromethane		
Crotonaldehyde	4170303	2-butenal propylene aldehyde		
Dichlorobenzene	25321226	Di-chloricide	Ortho	95501
		Paramoth (Para)	Para	106467
Dichloropropane	26638197	Propylene dichloride	1,1	78999
			1,2	78875
			1,3	142289
Dichloropropene	26952238		1,3	542756
			2,3	78886
Dichloropropene-dichloropropane (mixture).	8003198	D-D mixture Vidden D		
Dinitrotoluene	25321146	DNT	2,4	121142
			2,6	606202
			3,4	610399
Epichlorohydrin	106898	-chloropropylene oxide		
Ethylene dibromide	106934	1,2-dibromoethane acetylene dibromide sym-dibromoethylene		
Ethylene dichloride	107062	1,2-dichloroethane sym-bichloroethane		
Hexachlorocyclopentadiene	77474	Perchlorocyclopentadiene		
Hydrogen sulfide	7783064	Hydrosulfuric acid sulfur hydride		
Kepone	143500	Chlordecone 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-1,3,4-metheno-2H-cyclobuta(cd)pentalen-2-one.		
Mercaptodimethur	2032657	Mesurol		
Nitrotoluene	1321126		Ortho	88722
			Meta	99081
			Para	99990
Propargite	2312358	Omite		
Propylene oxide	75569	Propene oxide		
Silver nitrate	7761888	Nitric acid silver (1+) salt lunar caustic		
2,4,5-T amines	6369966	Acetic acid (2,4,5-trichlorophenoxy)-compound with N,N-dimethylmethanamine (1:1).		
	6369977	Acetic acid (2,4,5-trichlorophenoxy)-compound with N-methylmethanamine (1:1).		
	1319728	Acetic acid (2,4,5-trichlorophenoxy)-compound with 1-amino-2-propanol (1:1).		
	3813147	Acetic acid (2,4,5-trichlorophenoxy)-compound with 2,2',2''-nitrilotris [ethanol] (1:1).		
2,4,5-T salts	13560991	Acetic acid (2,4,5-trichlorophenoxy)-sodium salt.		
2,4,5-TP acid	93721	Propanoic acid 2-(2,4,5-trichlorophenoxy).		
2,4,5-TP esters	32534955	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-, isooctyl ester.		
Thallium sulfate	10031591 7446186			
Trichloroethylene	79016	Ethylene trichloride		
Vinylidene chloride	75354	1,1-dichloroethylene 1,1-dichloroethene		

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[6560-01-M]

[FRL 1055-1]

PART 117—DETERMINATION OF REMOVABILITY OF HAZARDOUS SUBSTANCES

PART 118—DETERMINATION OF HARMFUL QUANTITIES FOR HAZARDOUS SUBSTANCES

PART 119—DETERMINATION OF UNITS OF MEASUREMENT AND RATES OF PENALTY FOR HAZARDOUS SUBSTANCES

Revocation of Regulations

AGENCY: Environmental Protection Agency.

ACTION: Revocation of Regulations.

SUMMARY: The Environmental Protection Agency hereby revokes all of 40 CFR Parts 117, 118, and 119. These regulations, dealing with the discharge of hazardous substances, were promulgated on March 13, 1978 (43 FR 10488-10505) pursuant to section 311 of the Clean Water Act (33 U.S.C. 1321). These Parts are being removed because section 311 of the Clean Water Act has been amended by Pub. L. 95-576. This new law no longer requires the agency to make determinations of removability and of quantities that will be harmful, or to establish units of measurement.

EFFECTIVE DATE: Immediately.

FOR FURTHER INFORMATION CONTACT:

Kenneth M. Mackenthun, Director, Criteria and Standards Division (WH-585), Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street S.W., Washington D.C. 20460, (202) 755-0100.

SUPPLEMENTARY INFORMATION: On March 13, 1978, the Environmental Protection Agency ("EPA") issued regulation under the Clean Water Act to control the discharge of hazardous substances. (43 FR 10474). Part 116 in Title 40 designated 271 substances as hazardous; Part 117 determined the removability of each of these substances; Part 118 determined the harmful quantify for each substance; and Part 119 set forth the Agency's determination of units of measurement and rates of penalty for each hazardous substance.

Prior to their effective date, the regulations were challenged in several law suits. One such suit resulted in an Order declaring EPA's determination of removability (Part 117) and harmful quantities (Part 118) invalid and resulted indirectly in the invalidation of the determinations of units of measurement and rates of penalty (Part 119). Part 116 was not affected by the Court's action. *See Manufacturing Chemists Association, et al.* v. *Costle, et al.*, 455 F. Supp. 968 (W. D. La., 1978).

In November, 1978, Section 311 of the Clean Water Act was amended by Pub. L. 95-576. The amended statute no longer requires the Agency to make determinations of removability or units of measurement, and Parts 117 and 119 are therefore revoked and will not be repromulgated. The method of determining reportable quantities, formerly termed "harmful quantities", has been greatly simplified by the recent amendment. Reportable quantities are being reproposed (as new Part 117—Determination of Reportable Quantities for Hazardous Substances) concurrently in this FEDERAL REGISTER.

Today, Part 116 (Designation of Hazardous Substances) is amended to designate as hazardous substances the 28 substances proposed on March 13, 1978 (43 FR 10506), as well as make certain changes required by the recent statutory amendments. In addition, EPA is also issuing an Advance Notice of Proposed Rule Making to solicit comments regarding the Agency's intent to expand the criteria for designating substances as hazardous.

This revocation shall be effective immediately. In 40 CFR, the following parts are revoked:

PART 117—DETERMINATION OF REMOVABILITY OF HAZARDOUS SUBSTANCES [REVOKED]

PART 118—DETERMINATION OF HARMFUL QUANTITIES FOR HAZARDOUS SUBSTANCES [REVOKED]

PART 119—DETERMINATION OF UNITS OF MEASUREMENT AND RATES OF PENALTY FOR HAZARDOUS SUBSTANCES [REVOKED]

Dated: February 8, 1979.

DOUGLAS M. COSTLE,
Administrator.

[FR Doc. 79-4890 Filed 2-15-79; 8:45]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 116]

[FRL 1055-4]

HAZARDOUS SUBSTANCES

Proposed Expansion of Criteria for Designation

AGENCY: Environmental Protection Agency.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The U.S. Environmental Protection Agency ("EPA") is hereby issuing an Advance Notice of Proposed Rulemaking (ANRP) to consider expansion of the criteria for designating hazardous substances. Regulations establishing the initial selection criteria were promulgated on March 13, 1978 (43 FR 10474) pursuant to section 311 of the Clean Water Act (33 U.S.C. 1321). EPA is considering the expansion of the selection criteria to include several new selection factors.

DATE: Comments must be received on or before May 17, 1979.

ADDRESS: Send comments to Criteria and Standards Division (WH-585) U.S. Environmental Protection Agency, 401 M Street, S.W. Washington, D.C. 20460.

FOR FUTHER INFORMATION CONTACT:

Kenneth M. Mackenthun, Director Criteria and Standards Division (WH-585) U.S. Environmental Protection Agency 401 M Street, S.W. Washington, D.C. 20460 (202) 755-0100.

SUPPLEMENTARY INFORMATION: On March 13, 1978, EPA promulgated regulations designating 271 substances as hazardous (43 FR 10474, 40 CFR Part 116). At that same time EPA proposed the designation of 28 additional substances as hazardous (43 FR 10506). Designation was based on their acute toxicity to aquatic animals. However, in that publication the Agency recognized that substances may present an imminent and substantial danger to the public health for reasons other than acute aquatic toxicity. As stated in the preamble to the March 13, regulations (at 10477): "* * * the Agency will seek to expand both the selection criteria and the list of designated hazardous substances in the months ahead. The Agency supports the general comcept that episodic discharges of substances that bioaccumulate to cause subsequent damage to an organism or its predator, or of substances that have been shown to be carcinogenic, mutagenic, or teratogenic are discharges of hazardous substances. The Agency will undertake efforts immediately to revise the selection criteria and to expand the list of hazardous substances to include such materials."

The Agency therefore now gives notice that it is considering expansion of the selection criteria for hazardous substances to include several chronic and long-term effects; these would include such factors as carcinogenicity, mutagenicity, teratogenicity, bioaccumulative effects, synergistic and antagonistic chemical effects, and radioactivity. The Agency is particularly interested in receiving comments on the practicality and necessity of including in future designations such long-term and chronic effects as specified above, as well as the practicality and desirability of any additional factors that may be necessary to identify those substances the discharge of which presents an imminent and substantial danger to the public health or welfare, including, but not limited to fish, shellfish, wildlife, shorelines and beaches.

EPA recognizes that the issues surrounding chronic toxicity do not lend themselves to easy decisions. For instance, the issue of whether and to what degree a substances poses a carcinogenic risk is on the frontier of scientific knowledge, and subject to debate and disagreement. EPA is considering designating substances as hazardous when there is a risk of chronic toxicity to an aquatic organism, to its consumer, or to the consumer of the water which contains the hazardous substance. This position appears appropriate since (1) designation cannot await final resolution of the on-going scientific debate; (2) the Agency has a duty to protect health and the environment, a duty which is preventative and precautionary; and (3) designation does not prohibit manufacture, use, or transportation, but rather prohibits discharges and requires prompt notification and mitigation of discharge. Further, while the 271 substances that were identified in the March 13, 1978, FEDERAL REGISTER as hazardous were designated on the basis of acute toxicity data, the Agency recognizes that a discharge of a hazardous substance with a chronic toxicity hazard may present an imminent and substantial danger to individuals at a time subsequent to the discharge event. Accordingly, the Agency desires information on those factors that may relate discharges of hazardous substances to the later appearance of debilitating chronic effects.

EPA intends to make use of toxicity data gathered in developing water quality criteria and other reguations for toxic pollutants, under section 307 of the Act. Moreover, the Agency may consider the partial or full adoption of criteria, and lists of materials identified thereunder, which have been developed for specific purposes by other agencies or organizations. For example, OSHA has published a list of materials it considers to be human carcinogens. EPA will examine this and other appropriate lists in determining which criteria are appropriate for use in designating substances as hazardous.

REQUEST FOR COMMENTS

Our intent is to consider substances which are carcinogenic, mutagenic, teratogenic, radioactive and which bioaccumulate in animal tissue to cause chronic toxic effects. Suggestions and comments are therefore invited regarding the manner in which selection criteria might be expanded to include such effects, as well as what additional effects or factors should be added to the selection criteria. Toward this end, responses and comments to the following specific questions are requested.

(1) What is the appropriate basis for designating a carcinogen, mutagen or teratogen as a hazardous substance?

(2) How should reportable quantities be defined for carcinogens, mutagens or teratogens?

(3) What bioaccumulation factor (i.e., ratio of a substance's concentration in animal tissue to that in the animal's environment) is appropriate for the designation of a substance as hazardous?

(4) How should reportable quantities be defined for bioaccumulative substances?

(5) How should the radioactive properties of a substance be considered in designating hazardous substances?

(6) How should reportable quantities be determined for radioactive substances?

(7) What mechanism should be used to define reportable quantities of hazardous substances for the phenomena of synergism and antagonism between chemical entities?

(8) What additional hazardous effects need be considered?

(9) What should be the basis for defining substances exhibiting these effects?

(10) How should reportable quantities be defined for these substances?

Comments or suggestions other than those specifically requested will be appreciated.

EPA will carefully consider all timely public comments before developing a notice of proposed rulemaking on amendments to 40 CFR Part 116.

DOUGLAS M. COSTLE.
Administrator.

Dated: February 8, 1979.

[FR Doc. 79-4889 Filed 2-15-79; 8:45 am]

[6560-01-M]

[40 CFR Part 117]

[FRL 1055-5]

HAZARDOUS SUBSTANCES

Determination of Reportable Quantities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: On March 13, 1978, EPA published regulations under the Clean Water Act regarding the discharge of hazardous substances. (43 FR 10474.) Subsequent litigation and amendments to the Clean Water Act make it necessary to revoke portions of those regulations and propose new regulations. These regulations should be read in conjunction with Part 116—Designation of Hazardous Substances, promulgated March 13, 1978 (43 FR 10474-10488) and amended today in this FEDERAL REGISTER.

DATE: Comments on this proposal will be received until March 19, 1979.

ADDRESS: Send comments to the Criteria and Standards Division (WH-585), Office of Water Planning and Standards, EPA 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth M. Mackenthun, (202) 755-0100.

SUPPLEMENTARY INFORMATION:

PURPOSE OF REGULATIONS

On March 13, 1978, the Environmental Protection Agency ("EPA") issued regulations under the Clean Water Act to control the discharge of hazardous substances. (43 FR 10474.) Part 116 in Title 40 designated 271 substances as hazardous; Part 117 determined the removability of each of these substances; Part 118 determined the harmful quantity for each substance; and Part 119 set forth the Agency's determination of units of measurement and rates of penalty for each hazardous substance. On the same day, EPA proposed regulations designating an additional 28 substances as hazardous; these regulations are being promulgated today along with this proposal.

Prior to their effective date, the regulations were challenged in several law suits. One such suit resulted in an Order declaring EPA's determinations of removability (Part 117) and harmful quantities (Part 118) invalid and resulted indirectly in the invalidation of the determinations of units of measurement and rates of penalty (Part 119). The designation of hazardous substances (Part 116) was not affected by the Court's action. See *Manufacturing Chemists Association, et al. v. Costle, et al.*, 455 F. Supp. 968 (W. D. La., 1978).

On November 2, 1978, Section 311 of the Clean Water Act was amended by Pub. L. 95-576. The amended statute no longer requires the Agency to make determinations of removability or units of measurement for computing penalties. Therefore, Parts 117 and 119 of the March 13, 1978, regulations are being revoked in a separate notice in this FEDERAL REGISTER and will not be repromulgated. The basis for determining reportable quantities, formerly termed "harmful quantities", has been greatly simplified by the recent amendment and, therefore, Part 118 of the March 13, 1978, regulations is also being revoked in this FEDERAL REGISTER. Reportable quantities are being reproposed at this time as a new Part 117.

The new Part 117 consists primarily of the following changes from the old Part 118. The definition section will be amended to include terms required by the recent statutory changes. The term "harmful quantity" has been changed to "reportable quantity". Under the old statute, reporting and other requirements of section 311 were triggered by a discharge of a "harmful quantity" (old 311(b)(3), i.e., a quantity which "will be harmful" at the "times, locations, circumstances and conditions" of discharge (311(b)(4)). The Louisiana District Court invalidated the quantities promulgated in the March 13, 1978, regulations because they were not predictive of actual harm in all instances.

The statutory amendment has changed the quantities which trigger the provisions of section 311 to quantities which "may be harmful", and deleted the reference to specific circumstances and conditions. The legislative history of the amendment makes it clear that in making this change, Congress intended that the determination of reportable quantities would not require an assessment of actual harm in the variety of circumstances in which hazardous substances might be discharged. Rather, Congress intended that the determination be based on the chemical and toxic properties of the substance itself, not the circumstances surrounding its release. The practical effect of this change is that reportable quantities need not be predictive of the actual harm caused by particular discharges in individual circumstances. Instead, reportable quantities need only be a rational generalized prediction of those quantities which may be harmful. Congress contemplated that the Agency would reissue regulations which contained the same "quantities" as those in the March 13 regulations. Thus, the duty to notify authorities of a discharge is not dependent on a showing of actual harm; the degree of harm and other relevant factors are instead examined in assessing civil penalties.

METHOD FOR DETERMINING REPORTABLE QUANTITIES

The designation of hazardous substances to which reportable quantities are assigned was not affected by the 1978 amendment to section 311. This fact was emphasized in the legislative history. This rulemaking designates as reportable quantities the harmful quantities for the 271 hazardous substances that were promulgated (43 FR 10493) and the 28 hazardous substances that were proposed (43 FR 10507) on March 13, 1978.

Toxicological data for individual substances used in determining reportable quantities were derived from the compendium of information fact sheets entitled, *Hazardous Substances Facts Sheets, 1977,* which are available from the Environmental Protection Agency. In addition, other primary sources of data were: "Water Quality Criteria", Federal Pollution Control Administration, 1968, "Water Quality Criteria", EPA, March 1973, and Quality Criteria for Water, EPA 440/9-76-023, July 1976.

The reportable quantity of mixtures or solutions is considered additive based upon the proportions of the individual elements or compounds as follows: For a mixture or solution of substance X substance Y and substance Z, etc., the weight of substance X discharged, is divided by the reportable quantity of pure substance X, and so forth. Next the fractions so derived are added. If the total equals or exceeds one, then the reportable quantity of the mixture or solution has been equaled or exceeded. The discharger must report the total weight of the mixture discharged and the weights, to the best of his knowledge, of the individual hazardous substances constituted in the mixture.

At the time that the original section 311 regulations were promulgated, the Agency responded to a number of comments regarding the method used for determining reportable quantities of both substances and mixtures of solutions. Reference is again made to those comments and replies (43 FR 10474-10488).

Because of an error in data interpretation for one substance and the inadvertent placement of two other substances in incorrect categories, the Agency is changing the hazard category of three substances.

The decomposition products of phosphorus pentasulfide were found to have been entered incorrectly in an earlier fact sheet; this resulted in that substance being incorrectly placed in

hazard Category B. The decomposition products were cited as phosphoric acid and sulfuric acid rather than phosphoric acid and hydrogen sulfide. The 96-hour LC50 toxicity of hydrogen sulfide is 2.0 mg/l, which is within the toxicity range of Category B. The hazard category of phosphorus pentasulfide is therefore changed from C to B.

Resorcinol was placed incorrectly in Category D. Based on its 96-hour LC50 toxicity of 56.6 mg/l it should have been in Category C. The hazard category of resorcinol is therefore changed from D to C.

Trichlorfon was placed incorrectly in Category X because an error was made in entering its acute toxicity in the fact sheet. The 96-hour LC50 of this substance is 51 mg/l but was cited in the fact sheet as 0.051 mg/l. The hazard category of trichlorfon is therefore changed from X to C.

Both the fact sheets and list of hazardous substances have been changed as appropriate to reflect the foregoing.

Applicability

Any owner, operator or person in charge of a vessel or an on-shore or off-shore facility which discharges a hazardous substance in reportable quantity: (1) must immediately notify the Federal Government and is subject to criminal penalties for failure to do so (§ 311(b)(5)); (2) is subject to a civil penalty (§ 311(b)(6)); and (3) is liable for cleanup costs (§ 311(c) and (f)). However, no civil or criminal penalty will be assessed for a discharge beyond the contiguous zone where the owner, operator or person in charge is not otherwise subject to the jurisdiction of the United States.

The general applicability of the regulations being proposed today does not vary a great deal from the coverage of the regulations promulgated on March 13, 1978. As a result of the amendment however, these regulations explain in greater detail when a discharge from a NPDES permitted facility is excluded from section 311 coverage. These exclusions are discussed in greater detail under the following heading "Applicability to Discharges from Facilities with National Pollutant Discharge Elimination System (NPDES) permits".

In addition, a determination regarding one class of discharges that was originally excluded from coverage under the old regulations is being reserved pending further Agency consideration. More information is provided below in "Applicability to Discharges Associated With Dredging and Filling Activities".

As a result of the amendment to section 311 the Agency also feels it necessary to more explicitly address the applicability of these regulations to Publicly Owned Treatment Works (POTWs) and discharges which may enter navigable waters after passing through a sewer system. This is discussed in more detail below under the heading "Applicability to Discharges From Publicly Owned Treatment Works and Their Users".

The Agency received a comment that some substances are discharged for the purpose of extinguishing fire, or providing mandatory tests or services to a fire prevention system. Since none of the substances identified in this regulation was involved, EPA has not provided an exclusion for such discharges. However, the Agency requests comments concerning any discharges, which might be in the public interest and therefore be candidates for a specific exemption from these regulations.

The Administrator of the Environmental Protection Agency may allow the discharge of a substance above the reportable quantity on a case by case basis. This will only occur when significant evidence has been provided to show the Administrator that the discharge will occur in connection with research or demonstration projects relating to the prevention, removal, control or abatement of hazardous substances, and that the results of the study will outweigh the environmental hazard created as a result of the discharge (as provided for in section 104(i) of the Clean Water Act).

Applicability To Discharges From Facilities With National Pollutant Discharge Elimination System (NPDES) Permits

A new section has been added concerning the applicability of these regulations to discharges of hazardous substances from point sources with NPDES permits issued under section 402 of the Clean Water Act.

1. *Legislative history.* Under the old statute, it was unclear whether and to what extent discharges from facilities with NPDES permits were subject to the provisions of section 311. In 1978, Congress acted to clarify this ambiguity. Senator Stafford, a principal sponsor of the amendment to section 311, explained the general nature of the changes, "* * * we are attempting to draw a line between the provisions of the act under sections 301, 304, 402 regulating chronic discharges and 311 dealing with spills. At the extremes it is relatively easy to focus on the difference but it can become complicated. The concept can be summarized by stating that those discharges of pollutants that a reasonable man would conclude are associated with permits, permit conditions, the operation of treatment technology and permit violations would result in 402/309 sanctions; those discharges of pollutants that a reasonable man would conclude are episodic or classical spills not intended or capable of being processed through the permitted treatment system and outfall would result in the application of section 311."

More specifically, Senator Stafford related that "the changes make it clear that discharges, from a point source permitted under section 402, which are associated with manufacturing and treatment, are to be regulated under sections 402 and 309. 'Spill' situations will be subject to section 311, however, regardless of whether they occur at a facility with a 402 permit."

2. *Legislative amendment.* The November 2, 1978 amendment to the Clean Water Act (Pub. L. 95-576) set forth three types of discharges of hazardous substances which will be subject to sections 402 and 309 of the Clean Water Act and excluded from section 311 liability. The three cases excluded are (1) discharges in compliance with a permit under section 402 of the Act, (2) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Act, and subject to a condition in such permit, and (3) continuous or anticipated intermittent dischargers from a point source, identified in a permit or a permit application under section 402 of the Act, which are caused by events occurring within the scope of relevant operating or treatment systems. These excluded discharges are exempted from the reporting requirements, civil penalties, and clean-up cost liabilities under section 311 and are instead subject to sections 402 and 309 of the Act.

3. *Summary of Exclusions from Section 311.* Congress developed several concepts for distinguishing between discharges subject to section 311 and those subject to sections 402 and 309. At one end of the spectrum are discharges clearly subject to section 311, such as episodic events or classic spills not intended or capable of being processed through a treatment system. Examples would include on-site industrial spills such as truck or rail accidents, or substantial or large scale failures or ruptures of containers or vessels.

At the other extreme, and clearly subject to sections 402 and 309, are chronic discharges of process wastes from a 402 permitted source which are in compliance with an effluent limitation specifically applicable to the hazardous substance discharged. Such chronic discharges are exempted from section 311 by the first exclusion.

The second and third exclusions are designed to address those discharges falling between these relatively clear extremes. The second exclusion deals with discharges which result from circumstances identified and considered at the time a permit was written and

which are subject to a condition in a permit. Such circumstances could included chronic process waste discharges or tank ruptures, provided that the permit includes conditions to prevent or contain the discharge or eliminate or abate the substance prior to discharge (for example a holding pond to contain the materials discharged from a tank rupture and a system to treat the contained substance over time).

The third exclusion reflects Congress recognition that many existing permits do not contain "conditions" regulating hazardous substances, even for discharges which are clearly process related and chronic rather than spill-type situations. Chronic process related discharges from a permitted source will be exempt from the provisions of section 311 until the permitted source has the opportunity to submit information concerning hazardous substances during the next scheduled permit reissuance or revision.

The final exclusion also exempts anticipated periodic discharges which are caused by events occurring within the scope of the source's operating or treatment system. Such anticipated events which result in continuous or intermittent discharges would be subject to sections 402 and 309.

Each of the exclusions is explained in greater detail below:

4. *Discussion of Exclusion 1.* In some cases, permit effluent limitations representing an appropriate waste treatment technology level exceed the section 311 reportable quantity for a hazardous substance. Thus, a permittee may be in compliance with his permit while discharging a hazardous substance in amounts greater than the reportable quantity. Under these regulations, if a discharge is in compliance with a permit issued under section 402, there is an automatic exclusion from section 311. The permit must contain an effluent limitation specifically applicable to the hazardous substance discharged in order to qualify for this exclusion. Spills, leaks, or other discharges which are not specificially addressed by an effluent limitation in the permit, unless covered by one of the other exclusions, will be subject to section 311, including requirements for Spill Prevention Control and Countermeasure (SPCC) plans (40 CFR Parts 112 and 151).

5. *Discussion of Exclusion 2.* Some discharges of hazardous substances from permitted facilities result from circumstances identified and considered in the issuance of a permit, but which not be subject to specific effluent limitations. The second exclusion addresses these situations, and is available if the source and amount of the substance to be discharged is identified and made a part of the public record, and if the discharge can be eliminated or abated by a treatment system and/or a best mamagement practice. Best management paractices as authorized by section 304(e) of the Act, are operating methods or procedures to prevent or minimize the potential for the discharge of toxic or hazardous substances from processes ancillary to the industrial manufacturing or treatment process.

In order to make discharges "part of the public record," the permit application must specifically identify the substances discharged, the estimated amount of each substance discharged, and the origin or source of the discharge. The Agency recognizes that there may be problems in estimating the amounts of the substances to be discharged due to dissociation of certain compounds and inadequate analytical testing methods. In revising the NPDES application and instructions, these issues will be addressed in more detail; however, it is anticipated that "best estimates" will be acceptable.

Secondly, the NPDES permit must contain best management practices requirements for controlling such discharges and/or effluent limitations specifically limiting the substance discharged. The permittee must demontrate in the permit application that the identified substances will be treated either by on-site auxiliary treatment systems separate and apart from the treatment systems treating the permittee's normal discharge, or by treatment systems treating the permittee's normal discharge which have been specifically designed and operated to treat the types and amounts of these substances. If discharges from events such as industrial spills (e.g., tank ruptures) are to be excluded from section 311, the treatment system must be sufficent to handle the maximum probable occurrence (maximum possible occurrence reasonably contemplated). This additional capacity of the waste treatment system must be specifically documented in the permit application or the permit itself. That is, this exclusion will not apply where the amount of discharge from a particular source (i.e, tank) is identified based on normal leakage, but the actual discharge results form tank rupture and contributes far more than the hazardous substance than was contemplated.

Spills, leaks, or other such discharges which are not contemplated in the design and operation of the waste treatment system or in the development of the NPDES permit are not covered under section 402 but will be subject to section 311, including requirements for SPCC plans (40 CFR Parts 112 and 151). For example, on-site industrial spills such as truck or rail accidents or substantial or large scale failures or ruptures of containers or vessels would be subject to section 311. However, if such on-site spills were processed through a treatment system capable of eliminating or abating such spills, and are subject to a permit condition, such discharges would be regulated under sections 309 and 402. Section 311 will apply where a discharge of a hazardous substance does not pass through a waste treatment system or is not otherwise treated in any way. Additionally, section 311 will apply if materials are discharged from waste treatment systems which have not been demonstrated as capable of eliminating or abating the discharge.

6. *Discussion of Exclusion 3.* An additional exclusion is provided for chronic process related discharges which have not yet been reviewed and made subject to a condition in a permit. Congress recognized that many existing permits do not identify or provide for the regulation of process related and chronic discharges of hazardous substances. The legislative history reveals an intent to provide such permitted sources "a reasonable opportunity to identify the constituents and elements of their effluent, to develop treatment and management procedures, and to apply for a new permit without being liable for section 311 penalties." See Statement of Rep. Breaux, Congressional Record of October 14, 1978 (H13599).

The Agency has determined that the "reasonable opportunity" contemplated by Congress should be interpreted as the time period preceding normal permit revision or reissuance. Accordingly, this exclusion is available until two actions occur: (1) the revised NPDES permit application and accompanying regulation are published and (2) a new or reissued permit is applied for with this new application and a new permit is issued. A new 40 CFR 122.14(a) was proposed on August 21, 1978 (43 FR 37093) regarding the NPDES application and numerous comments have been received. Revisions may be made prior to final promulgation. Permittees are not required to apply for a revised permit at this time in order to obtain an exclusion from section 311. The revised permit application will require identification of hazardous substances, the amount of the substance to be discharged, its origin and source, and documentation that the treatment system and/or best management practices will be sufficient to handle the additional substances. The chronic or process related discharge would be excluded from section 311 if the new or reissued permit fulfilled the requirements of the first or second exclusion.

The third exclusion also provides for discharges which are caused by events occurring within the scope of the relevant operating or treatment systems. The Agency recognizes that even a well operated facility is subject to anticipated periodic upsets which may cause continuous or intermittent discharges, and that such anticipated process related upsets should be subject to sections 402 and 309, not 311. Examples of such situations include system upsets caused by control problems or operator error, system failures or malfunctions; equipment or system start-ups or shut-downs; equipment washes, production schedule changes, noncontact cooling water contamination; or storm water contamination.

A comment has been added to the regulations explaining that certain discharges will not be excluded if they could have been prevented by proper materials handling, or other appropriate actions. Upsets in waste treatment systems and production process, those which might occur even though appropriate operating and maintenance procedures have been followed, should, and will, be excluded from section 311. Additionally, the cooling water and storm water runoff exclusions have been provided because either could result in the discharge of large volumes of water containing trace or low level concentrations of hazardous substances which, after multiplying the flow and concentration values, would result in quantities above the reportable levels contained in section 311. In these cases the exclusion from section 311 should apply. However, where upsets occur from improperly maintained equipment or where chemicals are dumped or discharged to cooling water streams or where large quantities of hazardous materials are spilled and not cleaned up prior to rainfall runoff, resulting discharges will not be excluded from section 311. Finally, "operator error" does not include errors causing classic spills, such as accidental tank ruptures, since such errors are not events occurring within the scope of operation or treatment systems.

7. *Notice.* At the end of this regulation a comment is provided which points out that NP DES regulations require permittees to notify the permitting authority of any discharger in violation of the section 402 permit. The final NPDES regulations will require that the permittee present evidence sufficient to determine if the discharge is covered under section 402 or under section 311. The comment also notes that if at the time of the violation of the section 402 permit, the discharge is uncertain whether the discharge is subject to section 311 or section 402, the permittee should notify the appropriate agency as specified in § 117.21 of these regulations.

APPLICABILITY TO DISCHARGES FROM PUBLICLY OWNED TREATMENT WORKS AND THEIR USERS

Discharges of hazardous substances may reach navigable waters through municipal sewers and sewage treatment plants. Such discharges can result from accidental spills of materials into sewer lines, intentional dumps into manholes and street drains, or through "normal" discharges made by facilities which use the POTWs to dispose of process wastes. Discharges of hazardous substances into municipal sewer systems can cause disastrous results, as illustrated in 1977 by the discharge of a large quantity of hexachlorocyclopentadiene to a POTW in Louisville, Kentucky.

The November 1978 amendment to section 311 did not deal specifically with the discharge of hazardous substances through POTWs to navigable waters. EPA believes that there is a need to clarify jurisdiction between those chronic discharges to POTWs which should be regulated under sections 307(b), (c) and 309 dealing with industrial pretreatment and spills to a POTW, which should be regulated under section 311. However, as the following discussion will point out, there are difficult and complex issues which must be addressed in making this distinction. At this time the Agency is reserving regulation of hazardous substance discharges to POTWs except in certain instances where a discharge to the sewer system is made by a truck, train or other mobile source.

There are two principal questions regarding the applicability of section 311 to discharges which enter POTWs before reaching navigable waters. The first question is how to differentiate between a classic spill and chronic discharges normally made to POTWs by the thousands of facilities which use municipal sewers to dispose of process and other wastes. Congress intended that chronic, process related discharges of hazardous substances from sources with NPDES permits be regulated under section 402/309, not section 311. Similarly EPA believes that it may be appropriate for chronic discharges of hazardous substances to POTWs to be regulated under sections 307(b), (c) and 309 which deal with industrial pretreatment.

In order to provoke public consideration and comment on this first question the Agency is suggesting two possible options for making the differentiation between a classic spill and a chronic discharge to a POTW. We hope that interested persons will suggest other alternatives.

One possibility for resolving the jurisdiction of section 311 versus sections 307 and 309 is to apply the same type of exclusions covering section 402 permitted discharges to sources discharging to navigable waters through POTWs. Thus, in principle, chronic discharges to POTWs could be distinguished from classic spills to POTWs as follows:

1. Chronic discharges of hazardous substances would be regulated under sections 307(b), (c) and 309 if they are associated with the operation of manufacturing processes and related treatment technology, regulated by EPA pretreatment standards or State or local pretreatment requirements and best management practices incorporated in a POTW's NPDES permit as part of an approved pretreatment program.

2. Discharges of hazardous substances that are episodic or classic spills, not intended or capable of being processed though a source's pretreatment system, would be subject to the reporting requirements, penalties and clean-up costs of section 311, regardless of whether categorical pretreatment standards have been established.

In applying these principles to discharges to a sewer system, EPA could utilize the principles of § 117.12 of these regulations which applies to direct discharges covered by NPDES permits.

However, a serious problem exists in applying Congress' concepts for excluding 402 permitted sources, to discharges to POTWs. In the case of direct discharges, the NPDES permit process allows EPA or an NPDES State to make a case-by-case examination of each source applying for a permit. This is an important step in differentiating between discharges subject to section 402 and 309 and those subject to section 311. It is clear that Congress intended that the NPDES permit be the mechanism through whih EPA or the NPDES State establish discharges eligible for an exclusion, hazardous substances discharged, the manufacturing and treatment processes covered by any exclusion, and enforceable requirements to eliminate or abate discharges of hazardous substances. The problem, of course, is that the Act does not provide for permits for discharges to POTWs. Consequently, there is no written record which EPA and the regulated party can reference to determine whether certain discharges are excluded from regulation under section 311.

It is possible that mechanisms other than permits could be used to retain the essence of Congress' intent in determining exclusions from section 311 for discharges to POTWs. This could be done by making all discharges of hazardous substances (in reportable quantities) to POTWs subject to regulation under section 311 unless a

chronic discharge of the substance was specifically regulated by a national pretreatment standard promulgated by EPA under section 307(b) and (c) of the Act or by a pretreatment requirement set by a State or local authority and incorporated into the POTW's section 402 permit as part of a pretreatment program approved in accordance with EPA's *General Pretreatment Regulations* (40 CFR Part 403).

In order to allow exclusion of chronic discharges not specifically regulated in pretreatment standards or requirements, the Agency could also allow exclusions for any other chronic discharge of a hazardous substance identified, reviewed and made a part of the reports submitted by a source under 40 CFR 403.12 of EPA's *General Pretreatment Regulations*. The *General Pretreatment Regulations* require sources subject to EPA's categorical pretreatment standards to submit a report to EPA or the NPDES State within 180 days of promulgation of the standard. These reports are required to establish whether the source is in compliance with pretreatment standards, and in cases of noncompliance, to establish a schedule for achieving compliance. Since these reports are already required, the source could, as an option, provide the same information which will be submitted by permitted direct discharges under § 117.12 of these proposed regulations. The required information would include the description of the substance and the amount of the substance to be discharged, its origin and source, and documentation that the treatment system or enforceable State or local best management practices will be sufficient to handle the identified substances. Where the appropriate information is submitted, discharges could unless disapproved, be exempt from regulation under section 311 in the same way discharges from NPDES permitted facilities will be exempt.

The above approach would exclude discharges of hazardous substances other than those regulated in the pretreatment standards from section 311, but would still limit the exclusion to dischargers subject to national pretreatment standards since only those sources covered by a national standard submit compliance reports. Sources not regulated by pretreatment standards, but who chronically discharge hazardous substances to sewer systems, would still be required to report these discharges and be liable under section 311. In some instances daily reporting could be required. This reporting burden could be resolved by allowing any source of chronic discharges to POTWs to submit to EPA the information described above and thus avoid daily reporting of chronic discharges of hazardous substances in excess of reportable quantities. However, such an approach would preclude any regulation and mitigation of the environmental impact of such discharges until pretreatment standards were developed for each designated substance and each source. Due to the complexity of developing technology-based pretreatment standards, effective environmental protection could be delayed for many years.

The second option for distinguishing between chronic discharges and spills to sewer systems is based partly on EPA's recognition that, while POTWs are in most cases designed to treat only domestic-type waste, they may achieve varying degrees of removal of other pollutants as well. Congress recognized the removal provided by municipal treatment in Section 307(b) of the Act, which specifically provides for modification of technology-based national pretreatment standards to account for pollutant removal achieved by POTWs.

As in the first option, all chronic discharges of hazardous substances (in reportable quantities) to POTWs would be excluded from regulation under section 311 if the chronic discharge of the substance was specifically regulated by a national pretreatment standard or by a State or local standard incorporated into the POTW's permit as part of an approved pretreatment program.

The major difference between this option and the first one is in how it deals with sources and substances not specifically regulated by pretreatment standards. Rather than attempting to make a case-by-case distinction between chronic discharges and spills for each source, the applicability to section 311 to discharges to sewers could be based on quantities which reflect treatment provided by POTWs prior to release to navigable waters.

To be more specific, industrial sources would be required to notify the Government if the quantity of the hazardous substance released to the sewer would exceed the reportable quantity established by this regulation after municipal treatment when the POTW discharges it to navigable waters. To determine whether a quantity released to sewers would be subject to section 311, EPA would multiply the reportable quantities established in this regulation by a factor reflecting the removal typically provided by a POTW with secondary biological treatment. Since data on the removal of all hazardous substances will not be available for some time and the Act provides for listing a substance as hazardous if it "may be harmful", the factor reflecting POTW removals would for most substances be based on assumed removal rates. In some instances reliable data on removals achieved by secondary biological treatment systems are available and would be used. As additional information on removals becomes available, estimated removals would be adjusted to reflect the new data. EPA would be conservative in estimating removal rates.

In this option, if a source chronically discharges less of a hazardous substance than the reportable quantity multiplied by the nationwide factor reflecting POTW removals, then it would not be subject to the provisions of section 311. Chronic discharges covered by pretreatment standards would also be excluded from section 311. Spills to sewers, including discharges in excess of the reportable quantity reflecting POTW removal and discharges to POTWs with less than secondary treatment technology, would be subject to section 311 reporting, penalties, and clean-up costs.

The Agency feels that, while there may be some difficult technical problems associated with this option, it offers a number of advantages over a system of case-by-case distinction between spills and chronic discharges. By consulting the list of quantities reflecting POTW removals, EPA and the source could quickly determine whether or not a discharge to the sewers was to be reported as a spill. This option is also consistent with Congress' desire not to require treatment redundant of that provided by a POTW. Finally EPA believes that it is simpler and less burdensome to administer since it does not require dischargers to submit information, and more importantly does not require the review of complex information by EPA or the Coast Guard, before responding to a spill.

Due to the complexity of the issues involved in regulating discharges of hazardous substances to POTWs, the potential impact of any decision on the thousands of facilities which regularly discharge hazardous substances to POTWs, and the uncertainty about the best way to distinguish chronic discharges from spills under section 311, EPA is reserving regulation of such discharges to POTWs at this time. This will give the Agency and the public an opportunity to further consider the issues and problems involved. After consideration of public comment on these initial ideas, EPA will formally propose for comment a separate section of these regulations to address discharges to POTWs.

However, there is one case where today's proposed regulations apply to discharges of designated hazardous substances to POTWs. Discharges will be subject to section 311 where a discharge of a reportable quantity of a designated hazardous substance is made to a sewer system from a truck, train, or other mobile source which has not contracted or otherwise re-

ceived written permission to discharge the designated substances into the POTW. For example, discharges to a sewer system by a waste hauler who contracts to discharge specified hazardous substances to the sewer, would not be required to report under section 311 and these regulations. However, an illegal discharge, or "midnight dump", as well as any accidental discharge by a mobile source into a POTW's sewer system would be reportable and subject to all applicable provisions of the regulations being proposed today.

The second principal question involves determining what should be the role and responsibility of the POTW when a section 311 substance is discharged to its sewer system.

As described above, the regulations being proposed today make discharges from a truck, train or other mobile source subject to section 311 reporting, penalties and costs of clean-up unless the mobile source had a contract or formal permission from the POTW to discharge specified hazardous substances to the sewer. Today's regulation reserves coverage of all other discharges to POTWs for further consideration. The following discussion of a POTW's responsibility under today's regulation will, therefore, only be relevant where the discharge to the POTW was from a mobile source. It should be noted however, that EPA is considering similar provisions regarding POTW responsibility for other discharges of hazardous substances to sewer systems. EPA solicits public comment on both the applicable provisions of today's regulation and the advisability of extending these provisions to indirect discharges for which regulation is being reserved.

The Agency believes that the November 1978, amendment excluding from section 311 certain discharges by sources with NPDES permits, applies directly to some discharges of hazardous substances a permitted POTW may make to navigable waters. In particular, the exclusion is appropriate for chronic discharges of hazardous substances such as chlorine, which are used by the POTW in the operation of its treatment system. Of course, classic spills by the POTW of hazardous substances should be subject to section 311, just as they would be from any other source. The problem is in determining the applicability of the exclusion provisions and defining the role and responsibility of a POTW when it discharges hazardous substances as a result of influent received from an indirect discharger. Application of Congress' intent is less clear in this case.

All of Congress' exclusions for permitted discharges presuppose that the permitted source knows of the presence of the hazardous substance and has made or will make provisons to treat the particular substance prior to its discharge. However, unless notified of a discharge to its system by a mobile source, the POTW cannot be expected to know of the presence of a hazardous substance in its system. Since EPA lacks authority under section 311 to require mobile sources (or other sources) who spill to POTWs, to notify the POTW, these regulations only require that the Coast Guard be notified. Therefore, under the proposed regulations, a mobile source is solely responsible for section 311 discharges which go to a POTW. Sources which spill hazardous substances to POTWs are, of course, urged to report the discharge to the POTW at the same time they report it to the Coast Guard so that the POTW can protect its treatment system and take any available mitigating actions. The Agency is investigating authority to require such dischargers to notify the POTW under sections 307(b) and 402(d) (8) of the Act.

In some cases a POTW may become aware that a spill to its system has occurred. This could occur where the POTW is notified by the source of the spill or where it becomes aware of an incident, as through news broadcasts. The Agency believes that if the POTW becomes aware that a spill from a mobile source has occurred, it should make the fastest and, under the circumstances, best assessment it can, concerning the most effective action to take. The goals should be twofold. First, to protect itself from serious damage or upset, and second, to mitigate the damage to the environment to the maximum extent possible. Measures a POTW might take may include partial or complete treatment of the hazardous substance or a diversion or bypass of flows containing the substance.

EPA will notify the NPDES regulations to require that if the POTW believes that a reportable quantity of the substance has been discharged or will be discharged to navigable waters, it shall immediately notify the Coast Guard of the discharge so that appropriate mitigation can begin at once and downstream users of the water can be warned. If, on the other hand, the POTW is certain it can prevent such a discharge, the NPDES regulations will require that it report to the Coast Guard that the spill will be contained or treated in its treatment system.

If the POTW is aware of a spill to its system from a mobile source, it will be responsible for implementing any applicable best management practices under section 304(e) in its 402 permit to control release of the hazardous substance to the environment. EPA has a proposed NPDES regulation, 40 CFR 151, which will require POTWs to develop best management practices. These best management practices include spill prevention control and counter-measures plans required by section 311(j). POTWs will be required to plan for such discharges and develop best management practices in advance for dealing with reported spills. Once best management practices are incorporated into the POTW's permit, failure to implement applicable practices upon learning of a spill to its sewers could subject the POTW to an enforcement action under section 309.

Some actions (e.g. bypasses) taken by the POTW to protect the integrity of the treatment plant and/or mitigate environmental damage may cause the POTW to violate its own NPDES permit limits. Until POTWs are next reissued 402 permits which identify such situations or best management practices are developed and incorporated into POTW permits specifying such situations and mitigating actions to be taken, POTWs acting in good faith to mitigate the effects of a spill will not be held responsible for such violations.

Applicability To Discharges Associated With Dredging and Filling Activities

Sections 311 and 404 of the Clean Water Act contain complementary and specific authority to reach the Act's objective of restoring and maintaining the chemical, physical and biological integrity of the Nation's waters. Each section must be implemented to ensure that the specific activities regulated by each section are conducted in an environmentally acceptable manner.

Section 404(a) of the Act provides that the Corps of Engineers "may issue permits, after notice and opportunity for public hearings, for the discharge of dredged or fill material into the navigable waters at specified disposal sites." Section 404(b)(1) requires the application of guidelines developed by the Administrator in conjunction with the Corps of Engineers in the specification of such disposal sites. Section 404(g) allows States with programs approved by the Administrator to issue permits for the discharge of dredged or fill material into waters which are not navigable-in-fact.

The Agency recognizes that dredge and fill activities must be conducted in an environmentally acceptable manner. However, the Agency has not yet determined the best method for ensuring the attainment of this goal, and whether section 311 is an appropriate section to apply to such activities. The Agency is currently re-evaluating and revising the 404(b)(1) guidelines, and is carefully examining the relationshiup of such guidelines to the section 311 program. Until this review

is completed, the applicability of section 311 provisions to dredge and fill activities will be reserved.

The Agency is considering a number of options regarding sections 311 and 404. Discharges of dredged or fill material which are conducted in compliance with a section 404 permit may be excluded from the provisions of section 311. This approach would rely upon the section 404(b)(1) guidelines to prevent the introduction into water of a hazardous substance in such quantity as may be harmful. Under the section 404 guidelines, the testing of dredged or fill material to determine the appropriateness of a discharge where a probability of environmental damage exists would be required.

Another option, that of application of the provisions of section 311 to activities permitted under section 404, may raise concerns. All dredged and fill materials, often exceeding several tons, would have to be tested for all hazardous substances to ensure compliance with section 311. Already this would involve 299 substances, and the list is expected to be expanded considerably in the future. Because of the vast amounts of material involved in dredge and fill operations, even minute concentrations of hazardous substances could be technically interpreted as exceeding the reportable quantities of the new part 117, even though such quantities might be bound to solids and not available or hazardous in fact.

The Agency solicits public comments on the best means of coordinating the relationship of sections 311 and 404. In particular, the Agency is interested in comments on the feasibility of testing, the types of tests that would be appropriate, the relative costs of such tests, suggestions on how discharges of dredged or fill material could be categorized to be accommodated by the section 311 regulations, and suggestions on other possible approaches for screening discharges of dredged or fill material in relation to the activities which are the subject of these regulations.

Section 117.33, "Applicability to Discharges of Dredged or fill Material", is therefore reserved pending further consideration.

Procedure for Giving Notice of Discharge

Procedures for giving notice of discharges above the reportable quantities are explained in 33 CFR 153.203, "Procedure for the Notice of Discharge". A copy of that regulation appears as Attachment I to this preamble.

Penalties

The amendment to section 311 of the Clean Water Act creates two methods for panalizing dischargers of oil or hazardous substances. The first, which already existed as section 311(b)(6) of the statute prior to the amendment of November 2, 1978, provides for the assessment by the United States Coast Guard of a civil penalty not to exceed $5,000 for the discharge of oil or a designated hazardous substance [section 311(b)(6)(A)]. The second option, created by the new amendment, provides that the EPA, through the Department of Justice, may initiate a civil action in Federal district court for penalties not to exceed $50,000 per discharge unless such discharge is the result of willful negligence or willful misconduct, in which case the penalty shall not exceed $250,000 [section 311(b)(6)(B)]. Factors to be considered by EPA in determining whether a higher penalty is warranted are described in this regulation. Prompt mitigation of a discharge is encouraged by making mitigation an important consideration in establishing the size of the penalty. This is particularly significant in discharges of hazardous substances which are capable of actual removal. A discharger of a designated hazardous substance can be penalized under section 311(b)(6)(A) or section 311(b)(6)(B), but not both. The EPA and the United States Coast Guard are developing an agreement regarding those cases which shall be referred to EPA for consideration of the higher penalty. In those cases where EPA determines to bring action for a civil penalty, administrative penalty assessment under section 311(b)(6)(A), which would otherwise be initiated by the United States Coast Guard, shall be withheld.

The legislative history supporting the November 2, 1978 amendment does not demonstrate an intent to change the penalty structure under section 311 for oil spill situations. Therefore, EPA does not intend to apply the 311(b)(6)(B) penalty to discharges of oil.

With regard to section 402 NPDES permitted facilities, civil penalties will not be assessed under both section 311 and section 309 for the same discharge.

It should also be noted that any costs of removal incurred in connection with continuous or anticipated intermittent discharges from a point source identified in a permit or permit application under section 402, or discharges from permitted point sources which are caused by events occurring within the scope of relevant operating or treatment systems, will be recoverable from the owner, operator or person in charge of the source of the discharge in an action brought under section 309(b) of the Clean Water Act.

Deferral of Regulations as They Apply to Discharges from Common Carriers

On Friday, August 25, 1978, EPA published notice in the Federal Register that it would defer implementing these regulations as they apply to discharges from railroad rolling stock. This was done because it had been pointed out that common carriers such as railroads must by law transport all shipments tendered to them in accordance with applicable legal requirements. Currently, there is no legal requirement that shippers identify their cargoes as containing substances designated as hazardous under section 311. Thus, railroad and trucking personnel may have no way of knowing whether a substance they are handling or carrying is subjeet to section 311's requirements. EPA is currently working with the Department of Transportation to expedite the development of appropriate legal requirments for shipper identification. These requirements are expected to be proposed within the next thirty days. When such requirements are promulgated, EPA will publish notice in the Federal Register announcing the effective date of the section 311 regulations as they apply to common carriers.

Economic Impact Statement

These regulations are intended to encourage a high standard of care in handling hazardous substances by prohibiting the discharge of such substances in reportable quantities. These regulations do not require the construction of pollution control equipment or the adoption of spill prevention plans, nor do they prohibit the manufacture, use or transport of any substance. Thus, compliance with these regulations will not result in any direct costs to the regulated parties.

However, two types of expenses may be incurred because of violations of these regulations: civil penalties and clean-up costs. Since economic impacts are generally based on compliance costs, not costs resulting from failure to comply, these two factors are not considered as direct impacts. This is particularly appropriate since in the absence of mandatory reporting of discharges of hazardous substances, there are little data on discharge events (i.e. number and size of discharges, types of materials spilled, resulting penalties, and associated clean-up costs). It is therefore very difficult to estimate the frequency of violations or the resulting costs.

As a result of the amendment to the statute, the potential penalties to be assessed under the proposed regula-

tions are considerably simplified and reduced from those originally promulgated. The former penalty structure was more complex and severe. The maximum penalty for a discharge from a land-based facility was set at $500,000 while a discharge from a vessel could result in a $5 million penalty. The penalty structure has now been both simplified and moderated (the maximum penalty for any discharge is now set at $50,000 unless it is the result of willful negligence or willful misconduct, where the penalty can reach $250,000). Therefore, the potential amounts of civil penalties will be substantially less than projected in the March 13, 1978 promulgation (43 FR 10479).

EVALUATION PLAN

Under the amendment to section 311, the Agency is required to "conduct a study and report to the Congress on methods, mechanisms, and procedures to create incentives to achieve a higher standard of care in all aspects of the management and movement of hazardous substances * * *. The Administrator shall include in such a study (1) limits of liability, (2) liability of third party damages, (3) penalties and fees, (4) spill prevention plans, (5) current practices in the insurance and banking industries, and (6) whether the penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92-500 should be enacted." (Pub. L. 95-576).

This study will provide the Agency with a more complete picture of the effectiveness of these regulations and possible economic impacts, and will allow the Agency to evaluate any procedural difficulties encountered in implementing the regulations. The Agency is required to complete this study by May, 1980. Plans are now being completed for the conduct of this study and the Agency will solicit assistance from interested parties in the performance of this study.

COMMENTS

The changes made in the regulations today deal primarily with the applicability section and the penalties for violation of this regulation. No change has been made in the list of substances or the reportable quantities except for the three substances addressed earlier in this preamble. Moreover, the methods of determining reportable quantities have not been changed. The Agency believes that in addressing the comments received on the original proposed regulations (43 FR 10490), it has sufficiently considered and responded to most issues concerning the sections of this regulation which are being reproposed at this time. All of the substantive changes from the regulations promulgated on March 13, 1978 are explained in this preamble. The changes involve the applicability of section 311. The Agency has determined that a comment period of thirty (30) days will be necessary to address the new issues in this proposed rulemaking.

DOUGLAS M. COSTLE,
Administrator.

FEBRUARY 8, 1979.

ATTACHMENT I

§ 153.203 *Procedure for the notice of discharge.*

(a) Before January 1, 1977, any person in charge of a vessel or an onshore or offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from that vessel or facility in violation of section 311(b)(3) of the Act, immediately notify by telephone, radio telecommunication, or a similar means of rapid communication, one of the following persons:

(1) Duty Officer, National Response Center, U.S. Coast Guard, 400 Seventh Street, SW, Washington, D.C. 20590, toll free telephone number 800-424-8802.

(2) The government official predesignated in the applicable Regional Contingency Plan as the On-Scene Coordinator for the geographic area in which the discharge occurs.

NOTE.—Regional Contingency Plans are available at Coast Guard District Offices and Environmental Protection Agency (EPA) Regional Offices, as indicated in Table 2. Coast Guard District Office and EPA Regional Office addresses are listed in Table 1.

(3) Commanding Officer or Officer-in-Charge of any Coast Guard unit in the vicinity of the discharge, or in the case of a discharge into the Panama Canal Zone, the Marine Traffic Control in Cristobal or Balboa.

(4) Commander of the Coast Guard district in which the discharge occurs.

NOTE.—Coast Guard Districts and corresponding States may be found in Part 3 of this Chapter.

(b) After December 31, 1976, any person in charge of a vessel or an onshore or offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from that vessel or facility in violation of section 311(b)(3) of the Act, immediately notify by telephone, radio telecommunication, or a similar means of rapid communication the official designated in paragraph (a)(1) of this section, except as prescribed in paragraph (c) and (d) of this section.

(c) If after December 31, 1979, to give notice as prescribed in paragraph (b) of this section is impractical, notice may be given to the officials listed in paragraphs (a)(2) through (a)(4) of this section in order of priority.

(d) After December 31, 1976 any person in charge of a vessel or an onshore or offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance occurring in Alaska or Hawaii from that vessel or facility in violation of section 311(b)(3) of the Act, immediately notify by telephone, radio telecommunications, or a similar means of rapid communications any

of the officials listed in paragraphs (a)(2) through (a)(4) of this section.

It is proposed to add Part 117 as follows:

Part 117—Determination of Reportable Quantities For Hazardous Substances

Subpart A—General Provisions

Sec.
117.1 Definitions.
117.2 Abbreviations.
117.3 Determination of reportable quantities.

Subpart B—Applicability

117.11 General applicability.
117.12 Applicability to discharges from facilities with NPDES permits.
117.13 Applicability to discharges from publicly owned treatment works and their users.
117.14 Applicability associated with dredging and filling activities.
117.15 Demonstration projects.

Subpart C—Notice of Discharge of a Reportable Quantity

117.21 Notice.
117.22 Penalties.
117.23 Liabilities for removal.

AUTHORITY.—Secs. 311 and 501(a), Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), (the Act) and Executive Order 11735.

Subpart A—General Provisions

§ 117.1 Definitions.

As used in this part, all terms shall have the meanings stated in 40 CFR Part 116.

"Reportable quantities" means quantities that may be harmful as set forth in § 117.3, the discharge of which requires notice as set forth in § 117.21.

"Administrator" means the Administrator of the Environmental Protection Agency (EPA).

"Mobile source" means any vehicle, rolling stock, or other means of transportation which contains or carries a reportable quantity of a hazardous substance.

"Public record" means the NPDES permit application or the NPDES permit itself.

"National Pretreatment Standard" or "Pretreatment Standard" means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307(b) and (c) of the Act, which applies to Industrial users of a publicly owned treatment works. It further means any State or local pretreatment requirement applicable to a discharge and which is incorporated into a permit issued to a publicly owned treatment works under section 402 of the Act.

"Publicly Owned Treatment Works" or "POTW" means a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act). This definition includes any sewers that convey wastewater to such a treatment works, but does not include pipes sewers or other conveyances not connected to a facility providing treatment. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Mixture" means any combination of two or more elements and/or compounds in solid, liquid or gaseous form except where such substances have undergone a chemical reaction so as to become inseparable by physical means.

"Remove" or "removal" refers to removal of the oil or hazardous substances from the water and shoreline or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

§ 117.2 Abbreviations.

NPDES equals National Pollutant Discharge Elimination System
RQ equals reportable quantity.

§ 117.3 Determination of reportable quantities.

The quantity listed with each substance in Table 117.3 is determined to be the reportable quantity for that substance. The reportable quantity of mixtures or solutions are considered additive based upon the proportions of the individual elements or compounds as follows: For a mixture or solution of substance X, substance Y, and substance Z, etc., the weight of substance X discharged is divided by the reportable quantity of pure subtance X, and so forth. Next, the fractions so derived are added. If the total equals or exceeds one then there reportable quantity of the mixture or solution has been equaled or exceeded.

TABLE 117.3 REPORTABLE QUANTITIES OF HAZARDOUS SUBSTANCES

NOTE.—The first number under the column headed "RQ" is the reportable quantity in pounds. The number in parentheses is the metric equivalent in kilograms. For convenience, the table contains a column headed "Category" which lists the code letters "X", "A", "B", "C" and "D" associated with reportable quantities of 1, 10, 100, 1,000 and 5,000 pounds respectively.

Material	Category	RQ in pounds (kilograms)
Acetaldehyde	C	1,000 (454).
Acetic acid	C	1,000 (454).
Acetic anhydride	C	1,000 (454).
Acetone cyanohydrin	A	10 (4.54).
Acetyl bromide	D	5,000 (2,270).
Acetyl chloride	D	5,000 (2,270).
Acrolein	X	1 (0.454).
Acrylonitrile	B	100 (45.4).
Adipic acid	D	5,000 (2,270).
Aldrin	X	1 (0.454).
Allyl alcohol	B	100 (45.4).
Allyl chloride	C	1,000 (454).
Aluminum sulfate	D	5,000 (2,270).
Ammonia	B	100 (45.4).
Ammonium acetate	D	5,000 (2,270).
Ammonium benzoate	D	5,000 (2,270).
Ammonium bicarbonate	D	5,000 (2,270).
Ammonium bichromate	C	1,000 (454).
Ammonium bifluoride	D	5,000 (2,270).
Ammonium bisulfite	D	5,000 (2,270).
Ammonium carbamate	D	5,000 (2,270).
Ammonium carbonate	D	5,000 (2,270).
Ammonium chloride	D	5,000 (2,270).
Ammonium chromate	C	1,000 (454).
Ammonium citrate	D	5,000 (2,270).
Ammonium fluoborate	D	5,000 (2,270).
Ammonium fluoride	D	5,000 (2,270).
Ammonium hydroxide	C	1,000 (454).
Ammonium oxalate	D	5,000 (2,270).
Ammonium silicofluoride	C	1,000 (454).
Ammonium sulfamate	D	5,000 (2,270).
Ammonium sulfide	D	5,000 (2,270).
Ammonium sulfite	D	5,000 (2,270).
Ammonium tartrate	D	5,000 (2,270).
Ammonium thiocyanate	D	5,000 (2,270).
Ammonium thiosulfate	D	5,000 (2,270).
Amyl acetate	C	1,000 (454).
Aniline	C	1,000 (454).
Antimony pentachloride	C	1,000 (454).
Antimony potassium tartrate	C	1,000 (454).
Antimony tribromide	C	1,000 (454).
Antimony trichloride	C	1,000 (454).
Antimony trifluoride	C	1,000 (454).
Antimony trioxide	D	5,000 (2,270).
Arsenic disulfide	D	5,000 (2,270).
Arsenic pentoxide	D	5,000 (2,270).
Arsenic trichloride	D	5,000 (2,270).
Arsenic trioxide	D	5,000 (2,270).
Arsenic trisulfide	D	5,000 (2,270).
Barium cyanide	A	10 (4.54).
Benzene	C	1,000 (454).
Benzoic acid	D	5,000 (2,270).
Benzonitrile	C	1,000 (454).
Benzoyl chloride	C	1,000 (454).
Benzyl chloride	B	100 (45.4).
Beryllium chloride	D	5,000 (2,270).
Beryllium fluoride	D	5,000 (2,270).
Beryllium nitrate	D	5,000 (2,270).
Butyl acetate	D	5,000 (2,270).
n-Butyl phthalate	B	100 (45.4).
Butylamine	C	1,000 (454).
Butyric acid	D	5,000 (2,270).
Cadmium acetate	B	100 (45.4).
Cadmium bormide	B	100 (45.4).
Cadmium chloride	B	100 (45.4).
Calcium arsenate	C	1,000 (454).
Calcium arsenite	C	1,000 (454).
Calcium carbide	D	5,000 (2,270).
Calcium chromate	C	1,000 (454).
Calcium cyanide	A	10 (4.54).
Calcium dodecylbenzenesulfonate	C	1,000 (454).
Calcium hydroxide	D	5,000 (2,270).
Calcium hypochlorite	A	10 (4.54).
Calcium oxide	D	5,000 (2,270).
Captan	A	10 (4.54).
Carbaryl	B	100 (45.4).
Carbofuran	A	10 (4.54).
Carbon disulfide	D	5,000 (2,270).
Carbon tetrachloride	D	5,000 (2,270).
Chlordane	X	1 (0.454).
Chlorine	A	10 (4.54).
Chlorobenzene	B	100 (45.4).
Chloroform	D	5,000 (2,270).
Chlorpyrifos	X	1 (0.454).
Chlorosulfonic acid	C	1,000 (454).
Chromic acetate	C	1,000 (454).
Chromic acid	C	1,000 (454).
Chromic sulfate	C	1,000 (454).
Chromous chloride	C	1,000 (454).
Cobaltous bromide	C	1,000 (454).
Cobaltous formate	C	1,000 (454).

Material	Category	RQ in pounds (kilograms)
Cobaltous sulfamate	C	1,000 (454).
Coumaphos	A	10 (4.54).
Cresol	C	1,000 (454).
Crotonaldehyde	B	100 (45.4).
Cupric acetate	B	100 (45.4).
Cupric acetoarsenite	B	100 (45.4).
Cupric chloride	A	10 (4.54).
Cupric nitrate	B	100 (45.4).
Cupric oxalate	B	100 (45.4).
Cupric sulfate	A	10 (4.54).
Cupric sulfate ammoniated	B	100 (45.4).
Cupric tartrate	B	100 (45.4).
Cyanogen chloride	A	10 (4.54).
Cyclohexane	C	1,000 (454).
2,4-D Acid	B	100 (45.4).
2,4-D Esters	B	100 (45.4).
DDT	X	1 (0.454).
Diazinon	X	1 (0.454).
Dicamba	C	1,000 (454).
Dichlobenil	C	1,000 (454).
Dichlone	X	1 (0.454).
Dichlorobenzene	B	100 (45.4).
Dichloropropane	D	5,000 (2,270).
Dichloropropene	D	5,000 (2,270).
Dichloropropene-Dichloropropane Mixture	D	5,000 (2,270).
2,2-Dichloropropionic acid	D	5,000 (2,270).
Dichlorvos	A	10 (4.54).
Dieldrin	X	1 (0.454).
Diethylamine	C	1,000 (454).
Dimethylamine	C	1,000 (454).
Dinitrobenzene	C	1,000 (454).
Dinitrophenol	C	1,000 (454).
Dinitrotoluene	C	1,000 (454).
Diquat	C	1,000 (454).
Disulfoton	X	1 (0.454).
Diuron	B	100 (45.4).
Dodecylbenzenesulfonic acid	C	1,000 (454).
Endosulfan	X	1 (0.454).
Endrin	X	1 (0.454).
Epichlorohydrin	C	1,000 (454).
Ethion	A	10 (4.54).
Ethylbenzene	C	1,000 (454).
Ethylenediamine	C	1,000 (454).
Ethylene dibromide	C	1,000 (454).
Ethylene dichloride	D	5,000 (2,270).
EDTA	D	5,000 (2,270).
Ferric ammonium citrate	C	1,000 (454).
Ferric ammonium oxalate	C	1,000 (454).
Ferric chloride	C	1,000 (454).
Ferric fluoride	B	100 (45.4).
Ferric nitrate	C	1,000 (454).
Ferric sulfate	C	1,000 (454).
Ferrous ammonium sulfate	C	1,000 (454).
Ferrous chloride	B	100 (45.4).
Ferrous sulfate	C	1,000 (454).
Formaldehyde	C	1,000 (454).
Formic acid	D	5,000 (2,270).
Fumaric acid	D	5,000 (2,270).
Furfural	C	1,000 (454).
Guthion	X	1 (0.454).
Heptachlor	X	1 (0.454).
Hexachlorocyclopentadiene	X	1 (0.454).
Hydrochloric acid	D	5,000 (2,270).
Hydrofluoric acid	D	5,000 (2,270).
Hydrogen cyanide	A	10 (4.54).
Hydrogen sulfide	B	100 (45.4).
Isoprene	C	1,000 (454).
Isopropanolamine dodecylbenzenesulfonate	C	1,000 (454).
Kelthane	D	5,000 (2,270).
Kepone	X	1 (0.454).
Lead acetate	D	5,000 (2,270).
Lead arsenate	D	5,000 (2,270).
Lead chloride	D	5,000 (2,270).
Lead fluoborate	D	5,000 (2,270).
Lead fluoride	C	1,000 (454).
Lead iodide	D	5,000 (2,270).
Lead nitrate	D	5,000 (2,270).
Lead stearate	D	5,000 (2,270).
Lead sulfate	D	5,000 (2,270).
Lead sulfide	D	5,000 (2,270).
Lead thiocyanate	D	5,000 (2,270).
Lindane	X	1 (0.454).
Lithium chromate	C	1,000 (454).
Malathion	A	10 (4.54).
Maleic acid	D	5,000 (2,270).
Maleic anhydride	D	5,000 (2,270).
Mercaptodimethur	B	100 (45.4).
Mercuric cyanide	X	1 (0.454).
Mercuric nitrate	A	10 (4.54).
Mercuric sulfate	A	10 (4.54).
Mercuric thiocyanate	A	10 (4.54).

Material	Category	RQ in pounds (kilograms)
Mercurous nitrate	A	10 (4.54).
Methoxychlor	X	1 (0.454).
Methyl mercaptan	B	100 (45.4).
Methyl methacrylate	D	5,000 (2,270).
Methyl parathion	B	100 (45.4).
Mevinphos	X	1 (0.454).
Mexacarbate	C	1,000 (454).
Monoethylamine	C	1,000 (454).
Monomethylamine	C	1,000 (454).
Naled	A	10 (4.54).
Naphthalene	D	5,000 (2,270).
Naphthenic acid	B	100 (45.4).
Nickel ammonium sulfate	D	5,000 (2,270).
Nickel chloride	D	5,000 (2,270).
Nickel hydroxide	C	1,000 (454).
Nickel nitrate	D	5,000 (2,270).
Nickel sulfate	D	5,000 (2,270).
Nitric acid	C	1,000 (454).
Nitrobenzene	C	1,000 (454).
Nitrogen dioxide	C	1,000 (454).
Nitrophenol	C	1,000 (454).
Nitrotoluene	C	1,000 (454).
Paraformaldehyde	C	1,000 (454).
Parathion	X	1 (0.454).
Pentachlorophenol	A	10 (4.54).
Phenol	C	1,000 (454).
Phosgene	D	5,000 (2,270).
Phosphoric acid	D	5,000 (2,270).
Phosphorus	X	1 (0.454).
Phosphorus oxychloride	D	5,000 (2,270).
Phosphorus pentasulfide	B	100 (45.4).
Phosphorus trichloride	D	5,000 (2,270).
Polychlorinated biphenyls	A	10 (4.54).
Potassium arsenate	C	1,000 (454).
Potassium arsenite	C	1,000 (454).
Potassium bichromate	C	1,000 (454).
Potassium chromate	C	1,000 (454).
Potassium cyanide	A	10 (4.54).
Potassium hydroxide	C	1,000 (454).
Potassium permanganate	B	100 (45.4).
Propargite	A	10 (4.54).
Propionic acid	D	5,000 (2,270).
Propionic anhydride	D	5,000 (2,270).
Propylene oxide	D	5,000 (2,270).
Pyrethrins	C	1,000 (454).
Quinoline	C	1,000 (454).
Resorcinol	C	1,000 (454).
Selenium oxide	C	1,000 (454).
Silver nitrate	X	1 (0.454).
Sodium	C	1,000 (454).
Sodium arsenate	C	1,000 (454).
Sodium arsenite	C	1,000 (454).
Sodium bichromate	C	1,000 (454).
Sodium bifluoride	D	5,000 (2,270).
Sodium bisulfite	D	5,000 (2,270).
Sodium chromate	C	1,000 (454).
Sodium cyanide	A	10 (4.54).
Sodium dodecylbenzenesulfonate	C	1,000 (454).
Sodium fluoride	D	5,000 (2,270).
Sodium hydrosulfide	D	5,000 (2,270).
Sodium hydroxide	C	1,000 (454).
Sodium hypochlorite	B	100 (45.4).
Sodium methylate	C	1,000 (454).
Sodium nitrite	B	100 (45.4).
Sodium phosphate, dibasic	D	5,000 (2,270).
Sodium phosphate, tribasic	D	5,000 (2,270).
Sodium selenite	C	1,000 (454).
Strontium chromate	C	1,000 (454).
Strychnine	A	10 (4.54).
Styrene	C	1,000 (454).
Sulfuric acid	C	1,000 (454).
Sulfur monochloride	C	1,000 (454).
2,4,5-T acid	B	100 (45.4).
2,4,5-T amines	B	100 (45.4).
2,4,5-T esters	B	100 (45.4).
2,4,5-T salts	B	100 (45.4).
2,4,5-TP acid	B	100 (45.4).
2,4,5-TP acid esters	B	100 (45.4).
TDE	X	1 (0.454).
Tetraethyl lead	B	100 (45.4).
Tetraethyl pyrophosphate	B	100 (45.4).
Thallium sulfate	C	1,000 (454).
Toluene	C	1,000 (454).
Toxaphene	X	1 (0.454).
Trichlorfon	C	1,000 (454).
Trichloroethylene	C	1,000 (454).
Trichlorophenol	A	10 (4.54).
Triethanolamine dodecylbenzenesulfonate	C	1,000 (454).
Triethylamine	D	5,000 (2,270).
Trimethylamine	C	1,000 (454).
Uranyl acetate	D	5,000 (2,270).

Material	Category	RQ in pounds (kilograms)
Uranyl nitrate	D	5,000 (2,270).
Vanadium pentoxide	C	1,000 (454).
Vanadyl sulfate	C	1,000 (454).
Vinyl acetate	C	1,000 (454).
Vinylidene chloride	D	5,000 (2,270).
Xylene	C	1,000 (454).
Xylenol	C	1,000 (454).
Zinc acetate	C	1,000 (454).
Zinc ammonium chloride	D	5,000 (2,270).
Zinc borate	C	1,000 (454).
Zinc bromide	D	5,000 (2,270).
Zinc carbonate	C	1,000 (454).
Zinc chloride	D	5,000 (2,270).
Zinc cyanide	A	10 (4.54).
Zinc fluoride	C	1,000 (454).
Zinc formate	C	1,000 (454).
Zinc hydrosulfite	C	1,000 (454).
Zinc nitrate	D	5,000 (2,270).
Zinc phenolsulfonate	D	5,000 (2,270).
Zinc phosphide	C	1,000 (454).
Zinc silicofluoride	D	5,000 (2,270).
Zinc sulfate	C	1,000 (454).
Zirconium nitrate	D	5,000 (2,270).
Zirconium potassium fluoride	D	5,000 (2,270).
Zirconium sulfate	D	5,000 (2,270).
Zirconium tetrachloride	D	5,000 (2,270).

Subpart B—Applicability

§ 117.11 General applicability.

This regulation sets forth a determination of the reportable quantity for each substance designated as hazardous in 40 CFR Part 116. The regulation applies to quantities of designated substances equal to or greater than those set forth above, when discharged to waters and shorelines as provided in section 311(b)(3) of the Act, except to the extent that the owner or operator can show such discharges are made.

(a) In compliance with a permit issued under the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.),

(b) In compliance with approved water treatment plant operations as specified by local or State regulations pertaining to safe drinking water,

(c) Pursuant to the label directions for application of a pesticide product registered under 40 CFR Part 162 (Federl Register, Vol. 40, No. 129, Part II, pp. 28242-28226, July 3, 1975) by authority of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 (Pub. L. 92-516, 86 Stat. 751; 7 U.S.C. 136 et. seq.), and further amended by the Federal Pesticide Act of 1978 (Pub. L. 95-396, 92 Stat. 819),

(d) In compliance with the regulations issued under section 3004 of the Resource Conservation and Recovery Act, 90 Stat. 2795; 42 U.S.C. 6901,

(e) In compliance with instructions of the On-Scene Coordinator pursuant to 40 CFR 1510 (the National Oil and Hazardous Substance Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances) or in accordance with applicable removal regulations as required by Section 311(j)(1)(A),

(f) In compliance with a permit issued under § 165.7 of Title 14 of the State of California Administrative Code,

(g) From a properly functioning inert gas system when used to provide inert gas to the cargo tanks of a vessel,

(h) From a permitted source and are excluded by § 117.12 of this regulation, or

(i) To a POTW and are specificaly excluded or reserved in § 117.13.

§ 117.12 Applicability to discharges from facilities with NPDES permits.

(a) This regulation does not apply to:

(1) Discharges in compliance with a permit under section 402 of this Act;

(2) Discharges resulting from circumstances identified, reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit;

(3) Continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of the relevant operating or treatment systems; or

(4) Discharges from a POTW of substances received as influent at the treatment works.

(b) *Definitions.* (1) A discharge is "in compliance with a permit issued under section 402 of this Act" if the permit contains an effluent limitation specifically applicable to the substance discharged and the discharge is in compliance with the limitation.

(2) A discharge results "from circumstances identified, reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Act, and subject to a condition in such permit," whether or not the discharge is in compliance with the permit, if:

(i) The permit application specifically identifies:

(A) The substance and the amount of the substance to be discharged;

(B) The origin and source of the discharge; and

(C) The treatment to be provided for the discharge either by:

(*1*) An on-site treatment system separate and apart from any treatment system treating the permittee's normal discharge or

(*2*) A treatment system treating the permittee's normal discharge which is designed to treat the substance in the amount identified as to be discharged or

(*3*) A best management practice designed to prevent or contain the discharge and, if the discharge will occur, treatment to eliminate or abate the substance that could be discharged; and

(ii) The permit contains:

(A) A best management practice designed to prevent or contain the discharge, and, if the discharge will occur, treatment to eliminate or abate the substance that could be discharged or

(B) An effluent limitation specifically limiting the substance discharged and a requirement that the discharge be treated either by:

(*1*) An on-site treatment system separate and apart from any treatment system treating the permittee's normal discharge or

(*2*) A treatment system treating the permittee's normal discharge which is designed to treat the substance in the amounts identified as being or likely to be discharged

and the best management practice or treatment system is in existence and use; and

(3) A discharge is a "continuous or anticipated intermittent discharge from a point source, identified in a permit or permit application under section 402 of this Act, and caused by events occurring within the scope of the relevant operating or treatment system," whether or not such discharges are in compliance with the permit, if:

(i) An application for a permit for the discharge from the point source

has been submitted and has not been denied or revoked; and

(ii) The discharge is caused by:

(A) An upset or failure of a treatment system resulting from a control problem, operator error, system failure or

(B) Contamination by noncontact cooling water or storm water; or

(C) Upset or failure in the process producing the discharge the treatment system is designed to treat resulting from a control problem, operator error, system failure or malfunction; or an equipment or system startup or shutdown, equipment wash or production schedule change; or

[*Comment:* Discharges will *not* be excluded under section (3)(ii) if they could have been prevented by proper maintenance, proper materials handling, or other such action. Examples where these exclusions may *not* apply include chemical spills to noncontact cooling water, spills entrained by storm water runoff that could have been cleaned up prior to the rainfall event, and system upsets or failure where equipment has not been adequately maintained.]

(iii) The discharge is a continuous or anticipated intermittent discharge of process waste, and

(A) is discharged from a point source which holds a permit issued before the effective date of 40CFR 122.14(a) or

(B) the substance discharged is designated as hazardous after the date of any permit revised following promulgation of 40 CFR 122.14(a), but only until the next revision of the permit.

[*Comment:* The NPDES standard permit form presently requires the permittee to notify the permit issuing authority of a permit violation within five days of such violation (EPA Form 3560-2, Part II, Condition A 2). The proposed revisions to the NPDES regulations require the permittee to notify the permit issuing authority of a permit violation within 24 hours of such violation, (proposed 40 CFR 122.14(h), 43 FR 37093 (August 21, 1978)). When the NPDES regulations are finalized, this section will also require the written violations report submitted by the permittee to distinguish between section 311 and section 402 violations. If a permittee is uncertain whether a discharge is subject to section 402 or section 311, he should immediately provide notice under section 311 and § 117.21 of these regulations to avoid possible criminal liability.]

§ 117.13 Applicability to discharges from publicly owned treatment works and their users.

(a) [Reserved]

(b) These regulations apply to all discharges of reportable quantities to a POTW, the source of which is a mobile source except where such source has contracted with, or otherwise received written permission for the owners or operators of the POTW to discharge that quantity, and the mobile source can show that prior to accepting the substance from an industrial discharger, the substance had been treated to comply with any effluent limitation under section 301, 302 or 306 or pretreatment standard under section 307 applicable to that facility.

117.14 Applicability to discharges associated with dredging and filling activities. [Reserved]

§ 117.15 Demonstration projects.

Notwithstanding any other provision of this Part, the Administrator of the Environmental Protection Agency may, on a case-by-case basis, allow the discharge of designated hazardous substances in connection with research or demonstration projects relating to the prevention, control, or abatement of hazardous substance pollution. No such discharge will be allowed unless a significant showing has been made that the expected environmental benefit from such a discharge outweighs the hazard associated with the discharge.

Subpart C—Notice of Discharge of a Reportable Quantity

§ 117.21 Notice.

Any person in charge of a vessel or an onshore or an offshore facility shall, as soon as he has knowledge of any discharge of a designated hazardous substance from such vessel or facility in quantities equal to or exceeding in any 24-hour period the reportable quantity determined by this Part, immediately notify the appropriate agency of the United States Government of such discharge. Notice shall be given in accordance with such procedures as the Secretary of Transportation has set forth in 33 CFR 153.203. This provision applies to all discharges not specifically excluded or reserved by another section of these regulations.

§ 117.22 Penalties.

(a) Any person in charge of a vessel or an onshore or offshore facility who fails to notify immediately the United States Government of discharges of hazardous substances designated in 40 CFR Part 116 equal to or exceeding in any 24-hour period those quantities which may be harmful as set forth in this Part (except in the case of a discharge beyond the contiguous zone, where the person in charge of a vessel is not otherwise subject to the jurisdiction of the United States) shall be subject to a fine of not more than $10,000 or imprisonment for not more than one year, or both, pursuant to section 311(b)(5).

(b) The owner, operator or person in charge of a vessel or onshore or offshore facility from which is discharged a hazardous substance designated in 40 CFR Part 116 in a quantity equal to or exceeding in any 24-hour period, the reportable quantity established in this Part, (except in the case of a discharge beyond the contiguous zone, where the person in charge of a vessel is not otherwise subject to the jurisdiction of the United States) shall be assessed a civil penalty of up to $5,000 per violation under section 311(b)(6)(A). Alternatively, upon a determination by the Administrator, a civil action will be commenced under section 311(b)(6)(B) to impose a penalty not to exceed $50,000 per spill of hazardous substance unless such discharge is the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator, or person in charge, in which case the penalty shall not exceed $250,000.

[NOTE: The Administrator will take into account the gravity of the offense and the standard of care manifest by the owner, operator, or person in charge in determining whether a civil action will be commenced under section 311(b)(6)(B). The gravity of the offense will be interpreted to include the size of the discharge, the degree of danger or harm to the public health, safety, or the environment, including consideration of toxicity, degradability, and dispersal charateristics of the substance, pervious spill history, and violation of any spill prevention regulations. Particular emphasis will be placed on the standard of care and the extent of mitigation efforts manifest by the owner, operator, or person in charge.]

§ 117.23 Liabilities for removal.

In any case where a substance designated as hazardous in 40 CFR Part 116 is discharged from any vessel or onshore or offshore facility in a quantity equal to or exceeding the reportable quantity determined by this Part, the owner, operator or person in charge will be liable, pursuant to sections 311(f) and (g) of the Act, to the United States Government for the actual costs incurred in the removal of such substance, subject only to the defenses and monetary limitations enumerated in sections 311(f) and (g) of the Act. The Administrator may act to mitigate the damage to the public health or welfare caused by a discharge and the cost of such mitigation shall be considered a cost incurred under section 311(c) for the removal of that substance by the United States Government. In any case where a discharge is excluded from this regulation by § 117.12(b)(3) of this regulation the owner, operator or person in charge shall be liable for any costs incurred in the removal of such discharge in an action brought under section 309(b) of the Act.

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